

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 358

Introduced by Senator Ducheny

February 25, 2009

An act to amend Section 14030 of, and to add Article 10 (commencing with Section 14077) to Chapter 1 of Part 5 of Division 3 of Title 1 of, the Corporations Code, relating to Indian tribes, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 358, as amended, Ducheny. Indian tribes: economic development.

Existing law, the California Small Business Financial Development Corporation Law, authorizes the formation of small business financial development corporations to grant loans or loan guarantees for the purpose of stimulating small business development and imposes certain duties with respect thereto on a director designated by the Secretary of Business, Transportation and Housing. The California Small Business Expansion Fund, which is created under that law and is continuously appropriated, provides funds to be used to pay for defaulted loan guarantees and administrative costs of these corporations.

This bill would require the secretary to establish the Native American Business Revolving Loan and Guarantee Program for the purpose of providing nongaming business loans and loan guarantees to qualified Indian tribes, as defined. The bill would create the Native American Business Revolving Loan and Guarantee Program Account within the California Small Business Expansion Fund, solely for the purpose of receiving *certain* state, federal, or local government moneys, other public or private moneys, and tribal government contributions. The bill would continuously appropriate the moneys in the account to the director

for the purpose of implementing and administering the program. By authorizing the expenditure of funds from a continuously appropriated account, the bill would make an appropriation. The bill would require that the program and the steps necessary to implement it and make it operative not be undertaken until the secretary has determined that funds of a sufficient amount to create a loan pool and pay program administrative costs have been received into the account. The bill would require the director to provide for the development and implementation of the application review process for the program, subject to specified requirements. The bill would specify the maximum amount of a loan or loan guarantee granted under the program and would require a tribe applying for a loan to provide matching funds in a specified amount. The bill would create the Native American Business Finance Council, consisting of 9 members, ~~who are appointed by, and serve at the pleasure of, the Governor~~ *3 of whom would be appointed by the Senate Committee on Rules, the Speaker of the Assembly, and the Governor, respectively, as specified*, to provide policy and program guidance regarding the development and operation of the program. The bill would require the director to annually report to the secretary on the activities of the program, to include within that report information pertaining to the loss experience for loans and loan guarantees made pursuant to the program, and, no later than January 1, 2011, to report to the Governor and the Legislature the results of an independent audit of the program. The bill would enact other related provisions.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14030 of the Corporations Code, as
2 amended by Section 1 of Chapter 601 of the Statutes of 2007, is
3 amended to read:
4 14030. (a) There is hereby created in the State Treasury the
5 California Small Business Expansion Fund. All or a portion of the
6 funds in the expansion fund may be paid out, with the approval of
7 the Department of Finance, to a lending institution or financial
8 company that will act as trustee of the funds. The expansion fund
9 and the trust fund shall be used to pay for defaulted loan guarantees
10 issued pursuant to Article 9 (commencing with Section 14070),
11 administrative costs of corporations, and those costs necessary to

1 protect a real property interest in a defaulted loan or guarantee.
2 The amount of guarantee liability outstanding at any one time shall
3 not exceed five times the amount of funds on deposit in the
4 expansion fund plus any receivables due from funds loaned from
5 the expansion fund to another fund in state government as directed
6 by the Department of Finance pursuant to a statute enacted by the
7 Legislature, including each of the trust fund accounts within the
8 trust fund.

9 (b) There is hereby created in the California Small Business
10 Expansion Fund the Native American Business Revolving Loan
11 and Guarantee Program Account. The Native American Business
12 Revolving Loan and Guarantee Program Account is created solely
13 for the purpose of receiving state, ~~federal~~, *special fund moneys*,
14 *federal* or local government moneys, other public or private
15 moneys, and tribal government contributions, to make loans and
16 loan guarantees pursuant to Article 10 (commencing with Section
17 14077).

18 (c) Notwithstanding Section 13340 of the Government Code,
19 all moneys in the Native American Business Revolving Loan and
20 Guarantee Program Account shall be continuously appropriated
21 to the director for the purposes of implementing and administering
22 the program established pursuant to Article 10 (commencing with
23 Section 14077).

24 (d) This section shall remain in effect only until January 1, 2013,
25 and as of that date is repealed, unless a later enacted statute, that
26 is enacted before January 1, 2013, deletes or extends that date.

27 SEC. 2. Section 14030 of the Corporations Code, as added by
28 Section 2 of Chapter 601 of the Statutes of 2007, is amended to
29 read:

30 14030. (a) There is hereby created in the State Treasury the
31 California Small Business Expansion Fund. All or a portion of the
32 funds in the expansion fund may be paid out, with the approval of
33 the Department of Finance, to a lending institution or financial
34 company that will act as trustee of the funds. The expansion fund
35 and the trust fund shall be used to pay for defaulted loan guarantees
36 issued pursuant to Article 9 (commencing with Section 14070),
37 administrative costs of corporations, and those costs necessary to
38 protect a real property interest in a defaulted loan or guarantee.
39 The amount of guarantee liability outstanding at any one time shall
40 not exceed ~~four~~ *five* times the amount of funds on deposit in the

1 expansion fund plus any receivables due from funds loaned from
2 the expansion fund to another fund in state government as directed
3 by the Department of Finance pursuant to a statute enacted by the
4 Legislature, including each of the trust fund accounts within the
5 trust fund, unless the director has permitted a higher leverage ratio
6 for an individual corporation pursuant to subdivision (b) of Section
7 14037.

8 (b) There is hereby created in the California Small Business
9 Expansion Fund the Native American Business Revolving Loan
10 and Guarantee Program Account. The Native American Business
11 Revolving Loan and Guarantee Program Account is created solely
12 for the purpose of receiving state, federal, or local government
13 moneys, other public or private moneys, and tribal government
14 contributions, to make loans and loan guarantees pursuant to Article
15 10 (commencing with Section 14077).

16 (c) Notwithstanding Section 13340 of the Government Code,
17 all moneys in the Native American Business Revolving Loan and
18 Guarantee Program Account shall be continuously appropriated
19 to the director for the purposes of implementing and administering
20 the program established pursuant to Article 10 (commencing with
21 Section 14077).

22 (d) This section shall become operative on January 1, 2013.

23 SEC. 3. Article 10 (commencing with Section 14077) is added
24 to Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations
25 Code, to read:

26
27 Article 10. Native American Business Revolving Loan and
28 Guarantee Program
29

30 14077. For purposes of this article, the following definitions
31 shall apply:

32 (a) "Account" means the Native American Business Revolving
33 Loan and Guarantee Program Account created pursuant to Section
34 14030.

35 (b) "Applicant" means an applicant for a loan or loan guarantee
36 pursuant to this article.

37 (c) "Council" means the Native American Business Finance
38 Council created pursuant to Section 14077.4.

(d) “Program” means the Native American Business Revolving Loan and Guarantee Program established pursuant to Section 14077.1.

(e) “Qualified Indian tribe” means a federally recognized tribe located in this state that receives payments from the Indian Gaming Revenue Sharing Trust Fund.

14077.1. (a) The secretary shall establish the Native American Business Revolving Loan and Guarantee Program for the purpose of providing business loans and loan guarantees to qualified Indian tribes.

(b) The program and the steps necessary to implement the program to make it operative shall not be undertaken until the secretary has determined that funds of a sufficient amount to create a loan pool and pay program administrative costs have been received into the account.

14077.2. (a) The director shall provide for the development and implementation of the application review process for the program, including, but not limited to, defining the eligibility standards, the rating and ranking criteria, and other appropriate policies and procedures for evaluating direct loans and loan guarantees, subject to the following requirements:

(1) Loans and loan guarantees provided pursuant to the program shall be for nongaming business and shall be used to start, *acquire*, or expand a business or to supply working capital to a business.

(2) An eligible applicant for a loan or loan guarantee under the program shall be a qualified Indian tribe with a business, *or a qualified Indian tribe that intends to begin a business*, located either on Native American lands of a federally recognized tribe that is also a qualified Indian tribe or on property within the state.

(3) The maximum loan limit shall be ~~five hundred thousand dollars (\$500,000)~~ *one million dollars (\$1,000,000)*. All direct loans shall have a federal guarantee. Loan guarantees provided by the program shall have sufficient reserves in the account to guarantee the loan. The maximum loan guarantee shall be 90 percent of the loan amount, not to exceed ~~five hundred thousand dollars (\$500,000)~~ *nine hundred thousand dollars (\$900,000)*.

(4) A qualified Indian tribe applying for a loan pursuant to this article shall provide matching funds in an amount equal to one-half the amount of the loan requested. The matching funds shall come from any source of funds within the control of the tribe and may

1 include in-kind contributions. However, in-kind contributions shall
2 be limited to one-quarter of the value of the requested loan.

3 (5) An applicant shall demonstrate that it will have reasonable
4 access to business and management technical assistance during
5 the term of the loan or loan guarantee.

6 (6) The qualified Indian tribe shall be the majority owner of the
7 business during the term of the loan or loan guarantee.

8 (7) Loans may be provided at terms and conditions below market
9 rates to the extent that the overall revolving loan portion of the
10 program remains financially viable.

11 (8) A qualified Indian tribe shall not be eligible to apply for
12 funds pursuant to this article unless any funds previously loaned
13 to the tribe pursuant to this article have been repaid in full.

14 (9) Priority for program outreach activities shall be for qualified
15 Indian tribes that have no existing business enterprise.

16 (10) In the first year of the program, loans shall be awarded
17 through a competitive request for proposal process. Applications
18 for loans shall be rated and ranked based on their ability to meet
19 the purposes of the program, as described in subdivision (b). In
20 subsequent years, loans may be awarded through an ongoing
21 evaluation process to the extent that the purposes of the program,
22 as described in subdivision (b), can still be achieved.

23 (b) Loans and loan guarantees provided through the program
24 shall provide for the general welfare of a qualified Indian tribe and
25 its members by promoting long-term tribal economic development
26 that creates or retains jobs, increases incomes, develops work skills
27 and business management capacity, and serves qualified Indian
28 tribes ~~that have no existing business enterprise~~.

29 (c) The application review process developed pursuant to
30 subdivision (a) shall be approved by the council created pursuant
31 to Section 14077.4.

32 (d) In developing the program, the director shall seek to
33 maximize the ability of applicants to leverage other public and
34 private funding opportunities to the extent the addition of these
35 funds furthers the purposes of the program, as described in
36 subdivision (b). Key funding partners include, but are not limited
37 to, the United States Department of Agriculture, the Bureau of
38 Indian Affairs, the United States Department of Commerce, the
39 United States Department of Housing and Urban Development,
40 and foundations and other nonprofit organizations that share a

mission to expand entrepreneurship opportunities for small and medium size businesses and historically underserved communities.

(e) In addition to other activities, the director shall routinely seek the advice of the council on matters related to the management and operation of the program.

(f) The director shall have the authority to administer the distribution of funds from the account for the purposes of this article.

14077.3. (a) The agency may contract with one or more corporations to make loans and loan guarantees pursuant to this article.

(b) To execute direct loans under the program, the director may loan funds from the account to a corporation for the purpose of lending those funds to an approved applicant. The loan authorized by the director to the corporation shall be on terms similar to the loan between the corporation and the applicant. The loan between the agency and the corporation shall be evidenced by a credit agreement. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the agency shall be limited to the repayment received by the corporation from the applicant, except in a case where the federal guarantor requires exposure by the corporation in rule or regulation. Interest and principal received by the agency from the corporation shall be deposited into the account.

14077.4. (a) There is hereby created the Native American Business Finance Council. The purpose of the council is to provide policy and program guidance regarding the development and operation of the program.

(b) The management and operation of the council shall meet all of the following requirements:

(1) The council shall consist of nine members, ~~who are appointed by, and serve at the pleasure of, the Governor.~~

~~(2) The council shall include six members of federally recognized Indian tribes in California, three of whom shall represent tribes located in northern California and three of whom shall represent tribes located in southern California.~~

~~(3) The council shall include at least one member with expertise in each of the following areas: tribal government, business finance, and economic development related to the purposes of the program.~~
appointed as follows:

1 (A) *The Senate Committee on Rules shall appoint three members,*
2 *two of whom shall be members of federally recognized Indian*
3 *tribes in California. Of the two appointees who are members of*
4 *federally recognized Indian tribes in California, one shall represent*
5 *tribes in northern California, and the other shall represent tribes*
6 *in southern California.*

7 (B) *The Speaker of the Assembly shall appoint three members,*
8 *two of whom shall be members of federally recognized Indian*
9 *tribes in California. Of the two appointees who are members of*
10 *federally recognized Indian tribes in California, one shall represent*
11 *tribes in northern California, and the other shall represent tribes*
12 *in southern California.*

13 (C) *The Governor shall appoint three members, two of whom*
14 *shall be members of federally recognized Indian tribes in*
15 *California. Of the two appointees who are members of federally*
16 *recognized Indian tribes in California, one shall represent tribes*
17 *in northern California, and the other shall represent tribes in*
18 *southern California.*

19 (2) *Each member of the council shall have expertise in one or*
20 *more of the following areas: tribal government, business finance,*
21 *and economic development related to the purposes of the program.*

22 ~~(4)~~

23 (3) *Each member shall serve for a term of four years, except*
24 *that in the first round of appointments, three members, one of each*
25 *of the members appointed by the Senate Committee on Rules, the*
26 *Speaker of the Assembly, and the Governor, respectively, shall*
27 *serve for two years—~~and three other members, and three other~~*
28 *members, one of each of the members appointed by Senate*
29 *Committee on Rules, the Speaker of the Assembly, and the*
30 *Governor, respectively, shall serve for three years. Members shall*
31 *not be reappointed to the council until a minimum of one year has*
32 *elapsed.*

33 ~~(5)~~

34 (4) *A member of the council shall not vote on an application*
35 *from his or her own tribe.*

36 ~~(6)~~

37 (5) *Five members of the council shall constitute a quorum. A*
38 *vote of the majority of the members present at a meeting at which*
39 *there is a quorum shall constitute—~~the~~ an act of the council. A*
40 *member prohibited from voting under paragraph (5) shall not be*

1 included in determining whether a quorum exists for a particular
2 application. In addition, the majority needed to approve an
3 application shall be reduced by the number of members prohibited
4 from voting under paragraph (5).

5 14077.5. (a) The director shall annually report on the activities
6 of the program to the secretary as part of his or her annual reporting
7 requirements under Section 14030.2. The director shall include
8 within that report information pertaining to the loss experience for
9 loans and loan guarantees made pursuant to the program.

10 (b) The director shall, no later than January 1, 2011, submit to
11 the Governor and the Legislature the results of an audit of the
12 program undertaken by an independent entity.